

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

ABDIQAFAR WAGAFE, *et al.*, on behalf  
of themselves and others similarly situated,

Plaintiffs,

v.

DONALD TRUMP, President of the  
United States, *et al.*,

Defendants.

No. 2:17-cv-00094-RAJ

**SUPPLEMENTAL DECLARATION OF  
HEATH HYATT IN SUPPORT OF  
PLAINTIFFS' MOTION TO COMPEL  
DOCUMENTS WITHHELD UNDER THE  
LAW ENFORCEMENT AND  
DELIBERATIVE PROCESS PRIVILEGES**

I, Heath Hyatt, hereby declare:

1. I have personal knowledge of the facts stated below and am competent to testify regarding the same. I am one of the attorneys for Plaintiffs in this matter, *Wagafe v. Trump*, No. 17-cv-00094 RAJ.

2. On January 9, 2020, Plaintiffs filed their second Motion to Compel production of certain documents and the Certified Administrative Record ("CAR") where information was redacted due to the law enforcement or deliberative process privileges. *See* Dkt. 312. In this motion, Plaintiffs sought production of 64 documents and an unredacted version of the CAR.

3. After Plaintiffs filed this motion, the Court issued an Order (Dkt. 320) on January 16, 2020, granting in part and denying in part Plaintiffs' first Motion to Compel information withheld under the law enforcement and deliberative process privileges (Dkt. 260).

4. In response to this Order, the parties met and conferred on January 16, 2020, and Defendants agreed to reproduce lesser redacted documents at issue in Plaintiffs' second Motion to Compel (Dkt. 312), consistent with this Court's Order (Dkt. 320).

5. On January 27, 2020, Defendants reproduced lesser redacted versions of 39 of the 64 documents Plaintiffs challenged in their second Motion to Compel (Dkt. 316). Defendants also reproduced 18 lesser redacted CAR duplicate documents.

6. On January 31, 2020, the parties held a telephonic meet and confer to discuss the documents still at issue in the second Motion to Compel filed on January 9, 2020 (Dkt. 312) following the Court's Order (Dkt. 320) and Defendants' subsequent reproductions of documents. In this meet and confer, Plaintiffs agreed to withdraw their challenge to 28 of the 64 documents in the opening motion, and their challenges to the CAR except for Indexes 3, 10, 11, 22, 27, and 35. Plaintiffs also agreed to withdraw the argument that Defendants waived all privilege claims in the CAR by failing to properly assert the law enforcement privilege. Plaintiffs additionally agreed to withdraw the argument that Defendants' privilege logs were not sufficiently detailed.

7. Now, Plaintiffs move only on 36 documents and CAR Indexes 3, 10, 11, 22, 27 and 35.

8. Plaintiffs challenge 6 Indexes from the CAR, and these Indexes are listed below. However, Defendants have represented that two of the Indexes (Indexes 27 and 35) are substantially similar. *See* Dkt. 341-01. As a result, Defendants reproduced only one CAR duplicate document representing both these Indexes, so Defendants' Response states that Plaintiffs challenge only 5 CAR duplicate documents. *See* Dkt. 341 at 3, n.1. To avoid confusion over the number of documents at issue, Plaintiffs will count Indexes 27 and 35 as one document, consistent with how Defendants counted them. But Plaintiffs maintain their challenge to redactions in both Index 27 and Index 35 in this motion.

9. The full list of CAR Indexes Plaintiffs challenge is below:

CAR Index No.	CAR page	Title	Duplicate Begin Bates No.	Duplicate End Bates No.
3	CAR_000010	04/24/08 Operational Guidance for Vetting and Adjudicating Cases with National Security Concerns (Guidance)	DEF-00095009	DEF-00095054
10	CAR_000104	12/17/10 National Background Identity and Security Checks Operating Procedures	DEF-00003593	DEF-00003791
11	CAR_000303	04/01/11 Fact Sheet - Frequently Asked Questions (FAQ) CARRP Policy and Operational Guidance	DEF-00132598	DEF-00132636
22	CAR_000595	12/01/15 CARRP Module 3 CARRP Overview	DEF-00373850	DEF-00373989
27	CAR_001337	12/01/15 CARRP Module 5 - Determining Eligibility and Vetting National Security Concerns (June 2017 Update)	DEF-00116759	DEF-00116957
35	CAR_001963	12/01/17 CARRP Module 6 - Adjudicating National Security concerns	DEF-00116759+	DEF-00116957+

+Not an exact duplicate, but the slides are substantially similar. *See* Dkt. 341-01.

10. The 36 other documents Plaintiffs challenge are listed below:

Document	Production Bates Begin	Production Bates End
"Evaluation of the Utility of Checks: March 5, 2012"	DEF-00004010	DEF-00004017
Executive Summary: CARRP Enforcement Practice Proposal: November 5, 2012	DEF-00005579	DEF-00005582
Controlled Application Review and Resolution Program (CARRP) Processing for Known or Suspected Terrorist (KST) Cases	DEF-00017542	DEF-00017557
Controlled Application Review and Resolution Program (CARRP) Version 2.2	DEF-00021130	DEF-00021338
FDNS CARRP Training Course (FCPTC) Version 2.3 Instructor Guide	DEF-00026674	DEF-00026725

1	FDNS Senior Official CARRP Training	DEF-00044548	DEF-00044737
2	FDNS-DS System Generated Notifications Interim Standard Operating Procedures: April 28, 2015	DEF-00044891	DEF-00044911
3	Deconfliction, Internal and External Vetting and Adjudication of NS Concerns	DEF-00052177	DEF-00052362
4	Extreme Screening and Vetting Options	DEF-00096541	DEF-00096545
5	Executive Order 13780 Updates	DEF-00096701	DEF-00096705
6	USCIS Response to CRCL's Memorandum on Options for Guidance on Religious Questioning (August 2, 2011)	DEF-00174739	DEF-00174741
7	UNTITLED	DEF-00181890	DEF-00181899
8	Western Region Comments: Gaps in CARRP Policy and Procedure	DEF-00181912	DEF-00181915
9	UNTITLED	DEF-00184286	DEF-00184289
10	UNTITLED	DEF-00184291	DEF-00184293
11	UNTITLED	DEF-00184306	DEF-00184309
12	Initial Blue Sky Screening Proposals	DEF-00254790	DEF-00254796
13	Continuous Immigration Vetting Overview	DEF-00255323	DEF-00255323
14	Continuous Immigration Vetting Overview as of July 25, 2017	DEF-00255332	DEF-00255333
15	How the Executive Order will Impact Vetting	DEF-00261633	DEF-00261639
16	Executive Order's Impact to Vetting	DEF-00261640	DEF-00261641
17	200-day Report Section 5(b) of Executive Order (EO) 13780, Protecting the Nation from Foreign Terrorist Entry into the United States	DEF-00262350	DEF-00262353
18	DHS Screening Coordination Office: FY2017 Goals and Objectives	DEF-00262357	DEF-00262369
19	Immediate Actions to Heighten Screening and Vetting of Applications for Visas and Other Immigration Benefits	DEF-00262748	DEF-00262751
20	Information Sharing Standards for Visa and Immigration Vetting	DEF-00262793	DEF-00262793
21	Attachment A: Criteria Decision Matrix	DEF-00262796	DEF-00262798
22	EO 13780, Section 2b Report: Country Data Collection to Support Immigration Vetting and Admissibility Determinations	DEF-00262802	DEF-00262805
23	Executive Order's Impact to Vetting	DEF-00263389	DEF-00263390
24	Executive Summary - Measuring the Effectiveness of Executive Order 13780: Protecting the Nation from Foreign Terrorist Entry into the United States	DEF-00266453	DEF-00266454
25	Vetting and Screening	DEF-00267420	DEF-00267422
26	USCIS Interviews Recommendation Report	DEF-00270098	DEF-00270106
	Continuous Immigration Vetting Project Plan: April 29, 2016	DEF-00280914	DEF-00280920

List of Executive Order (EO)-related accomplishments to be completed in the next 90 days	DEF-00285830	DEF-00285839
Procedures for Identifying CARRP Concerns	DEF-00329157	DEF-00329162
Fraud Detection and National Security (FDNS) Deconfliction Job Aid	DEF-00329296	DEF-00329303
Enhanced Information Sharing with Law Enforcement: 2013	DEF-0074376	DEF-0074384

11. On February 7, 2020, Defendants' counsel emailed Plaintiffs' counsel to inform them that Defendants had mistakenly included an incorrect statement in Michael Scardaville's recently-filed affidavit, Dkt. 341-04. Specifically, Defendants realized that the second sentence below, excerpted from Dkt. 341-04 ¶ 22, was not correct:

Moreover, DEF-00266453 is a pre-decisional, draft document containing operational details relating to law enforcement activities that are not yet and should not be disclosed. The final document, with appropriate redactions to protect deliberative and law-enforcement information, was produced, including at DEF-00331096.

12. Consequently, Defendants have agreed to strike the second sentence appearing in Dkt. 341-4 ¶ 22. Defendants have also agreed to strike the following portion of Defendants' Response, Dkt. 341 at 11, because it relied on the stricken language from Mr. Scardaville's affidavit:

Also weighing against the disclosure of this information is the fact that, in at least one instance of draft information, "[t]he final document . . . was produced." *See* Ex. D at 7 ¶ 22; Dkt. 320 at 9; *see also F.T.C. v. Warner Connc'ns Inc.*, 742 F.2d at 1161 (establishing the availability of other evidence as a factor to consider when balancing whether a moving party's need for materials and accurate fact-finding override the government's interest in nondisclosure.

1 I declare under penalty of perjury that the foregoing is true and correct.

2 EXECUTED this 7th day of February, 2020, at Palo Alto, California.

3 /s/ Heath Hyatt

4 Heath Hyatt

**CERTIFICATE OF SERVICE**

I certify that on the date indicated below, I caused service of the foregoing document via the CM/ECF system, which will automatically send notice of such filing to all counsel of record.

DATED this 7th day of February, 2020, at Palo Alto, California.

/s/ Heath Hyatt

Heath Hyatt, WSBA No. 54141  
Perkins Coie LLP  
1201 Third Avenue, Suite 4900  
Seattle, WA 98101-3099  
Telephone: 206.359.8000  
Facsimile: 206.359.9000  
Email: HHyatt@perkinscoie.com